Decision 05-01-035 January 13, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Rehearing of Resolution E-3831	A. 04-08-009 (Filed August 9, 2004)

ORDER MODIFYING RESOLUTION E-3831 AND DENYING REHEARING OF RESOLUTION, AS MODIFED

I. SUMMARY

In Resolution E-3831, the Commission implemented the cost responsibility surcharge ("CRS") for customer generation departing load ("CGDL"), as mandated by Decision (D.) 03-04-030, as modified by D.03-04-041.

Pacific Gas and Electric Company, Southern California Edison Company, Energy Producers and Users Coalition, Kimberly Clark Corporation, and Goodrich Aerostructures Group (collectively, "Applicants") timely filed an application for rehearing. Applicants claimed that the Commission erred by: (1) stating that CGDL shall pay the same competition transition charge ("CTC") as paid by bundled-service and direct access customers; (2) issuing a resolution that could be misconstrued to prejudge an issue in another proceeding; (3) subjecting the CRS for CGDL to a 2.7 cent cap, and (4) exempting certain categories of CGDL from the 3,000 MW statewide cap. Applicants are claiming that the Resolution is inconsistent with previous Commission decisions.

Modesto Irrigation District filed a response to the application for rehearing. It argues that Resolution E-3831 does not in any way prejudge the outcome of A.03-08-004. (Modesto's Response to Application for Rehearing, p. 4.)

We have reviewed each and every allegation in the application for rehearing, and are of the opinion that Resolution E-3831 must be modified to remove an inconsistency contained therein regarding what exceptions for CGDL count toward the

3,000 MW cap. We find that the other issues presented in the rehearing application lack merit. Therefore, rehearing of Resolution E-3831, as modified herein, is denied.

II. DISCUSSION

1. The Commission did not err by stating that CGDL shall pay the same competition transition charge ("CTC") as paid by bundled-service and direct access customers.

Applicants argue that the Commission erred in Resolution E-3831 by applying a methodology for calculating the "tail" CTC for customer generation that goes beyond what was intended by D.03-04-030, as corrected by D.03-04-041, and the Settlement Agreement. Applicants argue that the calculation should be based on the statutory methodology set forth in Public Utilities Code Section 367, and not the "total portfolio methodology." (Application for Rehearing, pp. 5-7.) Thus, they argue that the Commission erred in determining that the method of calculating the tail CTC for CGDL is the same as for bundled service and direct access customers.

Applicants' argument has no merit. Our calculation of the tail CTC follows the requirement mandated in Public Utilities Code Section 367(a). (See CGDL Decision [D.03-04-040, p. 49, fn. 72 (slip op.)] (2003) ____ Cal.P.U.C.2d ___.) As we noted: "[A]ny CTC payments required by this decision are defined as in Public Utilities Code Section 367(a)(1)-(6). (Id.)

We have previously acknowledged that the tail CTC for direct access customers is "associated with Public Utilities Code Section 367." (See Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060 ("DA CRS Decision") [D.02-11-022, p. 103 (slip op.)] (2002) ___ Cal.P.U.2d ___; see also, generally, pp. 26 & 87-102 (slip op.).) We also note that the tail CTC for bundled service customers is calculated pursuant to Public Utilities Code Section 367. (See generally, Pub. Util. Code, §367.)

Thus, the calculation of the tail CTC, regardless of whether calculated for bundled, direct access or CGDL customers is based on the same statute. Accordingly, we

did not err when we required the utilities to "revise their proposed [CGDL] Schedules to reflect . . . that [the] Tail CTC surcharge is the same as that adopted for DA and bundled customers. (Resolution E-3831, p. 29 [Ordering Paragraph No. 10].)

We believe that Applicants' argument is premised on an erroneous assumption that the total portfolio methodology is another way to calculate the tail CTC. Rather, the total portfolio methodology calculates the indifference costs, taking into account the tail CTC, as part of a blended charge. (DA CRS Decision [D.02-11-022], supra, at pp. 23-26 (slip op.).) Applicants are incorrect when they argue that we have adopted two methodologies for calculating the tail CTC. (See Application for Rehearing, pp. 5-6.) We disagree that the total portfolio methodology is in any way inconsistent with the requirements of Public Utilities Code Section 367, and its subdivisions.

We note that the applicability of the total portfolio methodology depends on whether the customer is paying the power charge. Regardless of whether they are bundled, direct access or departing load customers, when a customer pays the power charge, the total portfolio calculation applies. When a customer does not pay the power charge, e.g., continuous DA customers and certain excepted CGDL customers, the calculation does not apply. However, in either case, the calculation of the tail CTC is based on the Public Utilities Code Section 367(a)(1)-(6) requirements.

In sum, we correctly determined in Resolution E-3831, pp. 19 and 27 [Finding of Fact No. 17], that CGDL shall pay the same tail CTC as paid by bundled-service and direct access customers. (See also, Resolution E-3831, p. 29 [Ordering Paragraph No. 10].)

2. Applicants' prejudgment claim has no merit.

Applicants claim that the Commission's determination regarding the tail CTC for CGDL could be misconstrued to prejudge the outcome of another pending proceeding, namely the Pacific Gas and Electric's 2004 Energy Resource Recovery Account ("ERRA") proceeding. In that proceeding, there is an issue concerning

municipal departing load ("MDL") customers, and the tail CTC. (Application for Rehearing, pp. 7-9.) We disagree.

Resolution E-3831 does not deal with the tail CTC issues related to MDL customers. Thus, Applicants' argument that the Commission has prejudged the ERRA proceeding on related issues raised by MDL customers is misplaced. Treating CGDL like bundled and DA customers for purposed of this implementing resolution in no way prejudges the tail CTC issue for MDL in another proceeding.

3. The 2.7 cent/kWh cap applies to CGDL.

Applicants argue that the Resolution erred by subjecting the CRS for CGDL to a 2.7 cents/kWh cap. They argue that Ordering Paragraph No. 13 in Opinion on Cost Responsibility Surcharge Mechanisms for Customer Generation Departing Load ("CG CRS Decision") [D.03-04-030, pp. 65-66 (slip op.)] (2003) ____ Cal.P.U.C.2d ____, does not impose this cap. However, Applicants are wrong.

Ordering Paragraph No. 13 of D.03-04-030 states:

> "To the extent that Departing Load customers are responsible for paying a DWR ongoing power charge after reaching the MW cap described in Ordering Paragraph 10, such charge shall be set equal to the corresponding cents per kilowatt-hour (kWh) surcharge component in effect on the date of departure determined pursuant to the Direct Access (DA) phase of R.02-01-011 and related successor proceedings." (Id.)

By this ordering paragraph, we intended to subject the CRS for CGDL to the same cap that was adopted for DA CRS. That cap was 2.7 cents/kWh, which the Commission later determined in a subsequent reconsideration should remain at 2.7 cents/kWh. (See Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060 ("DA CRS Cap Relook Decision") [D.03-07-030, pp. 103-104 [Ordering Paragraph No. 1] (slip op.)] (2003) ___ Cal.P.U.C.2d ___.) In D.03-04-040, we did not refer specifically to the 2.7 cents/kWh subsequently adopted for the cap, because of the pending reconsideration of

the DA CRS cap. That explains our reference to "related successor proceedings" in CG CRS Decision [D.03-04-030], supra, at p. 66 (slip op.).

We also note that the cap was not contested issue. Moreover, no party raised a challenge to this ordering paragraph in a rehearing application, and thus, it is final. Accordingly, we find no merit to Applicants' interpretation of Ordering Paragraph No. 13 of D.03-04-030.

4. Resolution E-3831 is modified to remove the inconsistency with D.03-04-030 regarding whether systems less than 1 MW count toward the 3,000 MW statewide cap.

Applicants allege that sections c and d of Ordering Paragraph No. 5 of Resolution E-3831 are unlawfully inconsistent with D.03-04-030. Specifically, they argue that the Commission impermissibly excluded biogas digesters and CG systems sized up to 1 MW and eligible for either net metering or a CEC/CPUC program from counting towards the 3,000 MW statewide cap. (Application for Rehearing, p. 11.) This allegation has merit.

In D.03-04-030, we determined that systems that are less than 1 MW count towards the cap. We stated:

> "In response to comments, we also make several modifications and clarifications on our preferences for administration of the cap. First, we will not require systems described in Section V.B.1 above (small clean and net-metered systems) to apply for exemptions under the cap. Such systems should be tracked by the utilities and reported as described in this decision, and should count towards the cap, but should be automatically granted the CRS exceptions to their fair share as described in this decision." (CGDL CRS Decision [D.03-04-030], supra, at p. 56 (slip op.), emphasis added.)

We further concluded in D.03-04-030: "It is reasonable to count systems under 1 MW toward the cap on exceptions, but to automatically grant the exceptions authorized in this order." (Id. at p. 63 [Conclusion of Law No. 17].)

Resolution E-3831 relies on Ordering Paragraph No. 10 of D.03-04-040 for excluding systems up to 1 MW from the counting towards the 3,000 MW cap. (See Resolution E-3831, p. 28 [Ordering Paragraph No. 5].) Ordering Paragraph No. 10 of D.03-04-030 states:

> "Exceptions adopted in today's decision as provided in Ordering Paragraphs 8 and 9, shall expire when the cumulative total of customer generation departing load eligible under those Ordering Paragraphs exceeds 3,000 MW, as determined on a first-come, first-served basis by the California Energy Commission. The amount of customer generation exceptions defined in Ordering Paragraph 9 shall be limited to 1,500 MW with no more than 600 MW by the end of 2004, an additional 500 MW by July 1, 2008, and a final 400 MW thereafter."

However, by relying solely on Ordering Paragraph No. 10, Resolution E-3831 is inconsistent with our intentions, reflected in other determinations in D.03-04-030 on the same issue, including the text and Conclusion of Law No. 17 in the decision. It appears that Ordering Paragraph No. 7 was inadvertently left out of Ordering Paragraph No. 10 of D.03-04-030. This is apparent when one looks at Ordering Paragraph No. 12 of D.03-04-030, which states:

> "The MW caps, as defined in Ordering Paragraph 10, shall be reevaluated by this Commission within three years of the date of this decision, or when the amount of installed customer generation in Ordering Paragraphs 7, 8, and 9 reaches 1000 MW, whichever occurs first. At that time, we will also reevaluate the 1 MW size limit defined in Ordering Paragraph 7, to take into account developments in technology and economies of scale." (CGDL CRS Decision [D.03-04-040], supra, at p. 65, emphasis added.)

Accordingly, in deciding the issue of whether systems of less than 1 MW count to the 3,000 MW cap, Resolution E-3831 erred in relying solely on Ordering Paragraph No. 10 of D.03-04-030. As a result, we inadvertently ignored our other determinations in D.03-04-030 on this same issue, which, by Ordering Paragraph No. 7,

include biogas digesters, among other producers. (See CGDL CRS Decision [D.03-04-030], supra, at pp. 56, 63 [Conclusion of Law No. 17], & 65 [Ordering Paragraph 12] (slip op.).) These other determinations expressly set forth our intention in D.03-04-030 that systems less that 1 MW count toward the 3,000 MW cap. By today's decision, we clarify the confusion caused by the inadvertent omission of Ordering Paragraph No. 7 in Ordering Paragraph No. 10.

As to the CRS exception for biogas digesters CGDL, these systems also count toward the cap. By statutory definition, biogas digesters are defined as being "not more than one megawatt" and are considered part of the net energy metering pilot program. (Pub. Util. Code, §2827.9, subd. (a)(1)-(a)(2).) Therefore, they fall within those systems identified in Ordering Paragraph No. 7, and thus, count toward the 3,000 MW cap.

Based on the above, Resolution E-3831 is modified to be consistent with the determinations in D.03-04-040 that make systems less than 1MW count toward the cap. Finding of Fact No 12 on page 27 will be changed to read:

> "For CG up to 1 MW, the CRS exception is tied to CPUC or CEC program eligibility and requires no other specific designation as a clean system to qualify. Pursuant to D.03-04-030, the exception for CGDL systems that are 1 MW and under shall be included in the count toward the 3,000 MW cap."

Further, the text for Ordering Paragraph No. 5 on page 28 of Resolution E-3831 will be rewritten to read as follows:

> "Consistent with D.03-04-040, PG&E, SCE, and SDG&E shall modify their proposed tariffs to reflect that the following do not count toward the 3,000 MW cap:"

In addition, Ordering Paragraph Nos. 5.c. and 5.d. on page 28 of Resolution E-3831 will be deleted.

III. CONCLUSION

As explained above, Resolution E-3831 is modified to remove an inconsistency with D.03-04-030, regarding what exceptions for CGDL count toward the 3,000 MW cap. Rehearing of Resolution E-3831, as modified is denied.

THEREFORE, it is hereby ordered that:

1. Resolution E-3831 is modify as follows:

   a. Finding of Fact No 12 on page 27 will be changed to read:

      > "For CG up to 1 MW, the CRS exception is tied to CPUC or CEC program eligibility and requires no other specific designation as a clean system to qualify. Pursuant to D.03-04-030, the exception for CGDL systems that are 1 MW and under shall be included in the count toward the 3,000 MW cap."

   b. The text for Ordering Paragraph No. 5 on page 28 is changed to read as follows:

      > "Consistent with D.03-04-040, PG&E, SCE, and SDG&E shall modify their proposed tariffs to reflect that the following do not count toward the 3,000 MW cap:"

   c. Ordering Paragraphs Nos. 5.c. and 5.d. on page 28 are deleted.

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2. Rehearing of Resolution E-3831, as modified herein, is hereby denied.

3. Application (A.) 04-08-009 is hereby closed.

This order is effective today.

Dated January 13, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners